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LETTER CO 25 L	
GOODFARB	
I Concur	
LES HARDY	
I Concur	
FRANKLIN K. GIBSON	
C.C. THAD MOORE	

January 26, 1960

Mr. Fred P. Talmadge
City Attorney
Benson, Arizona

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ARIZONA ATTORNEY GENERAL

Dear Mr. Talmadge:

Receipt is acknowledged of your letter of January 20, 1960 addressed to the State Tax Commission, asking for an opinion on whether or not the City of Sierra Vista may charge to its gas tax fund as a street improvement expense, the cost of street lighting. The State Tax Commission has referred it to us for answer.

It is the opinion of this office that the answer to your question is in the affirmative.

A.R.S. § 28-1502C specifically states that said gas tax funds paid to cities and towns may be used "solely for improvement, construction, reconstruction or maintenance of municipal streets and highways and administrative expenses in connection therewith * * *".

The use of the far reaching term "improvement" of "municipal streets" seems to show that the Legislature intended to grant wide discretion to the cities and towns because what can be classified as an "improvement" of a street or highway goes far beyond the asphalt or concrete of the road bed, itself. Certainly the lighting of the street or road within the city or town must be considered an improvement of such a street or road.

The Supreme Court of Oregon in the case of Fisher v. City of Astoria (1928) 126 Oregon 268, 269 Pac. 653, 60 A.L.R. 260, has specifically so ruled. As recently as 1953, the Supreme Court of New Mexico in Wiggs v. City of Albuquerque, 57 N.M. 770, 263 P.2d 963, ruled to the same effect with specific regard to the gasoline tax fund paid to New Mexico cities and towns. It therein held that such money could be used even for the electric current for operating the lighting system. The only case ruling somewhat to the contrary is the case of Utley v. City of St. Petersburg (1932) 106 Fla. 692, 144 So. 53, and

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in that case the court held that while the street lighting system can normally be considered an improvement of the street, under the specific Florida statute which defined what street improvements were allowable, the failure to include a street lighting system therein, would not allow the court to classify such as a street improvement under the specific statute.

It is, therefore, the opinion of this office that said funds can be used for street lights.

Very truly yours,

WADE CHURCH
The Attorney General

STANLEY Z. GOODFARB
Assistant Attorney General

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cc: State Tax Commission
State Capitol Bldg.
Phoenix, Arizona

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